International Union of Electrical, Radio and Machine Workers, AFL–CIO–CLC and its Local 664 *and* Nellie Reed and Spartus Corporation, Party to the Contract. Case 26–CB–1969

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 16 January 1984 Administrative Law Judge Martin J. Linsky issued the attached decision. Respondent International and Respondent Local filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel also filed limited cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

The judge found, and we agree, that Respondent Local and Respondent International violated Section 8(b)(1)(A) and (2) by maintaining and enforcing a seniority clause in their collective-bargaining agreement with the Employer which accords superseniority to Respondent Local's secretary-treasurer (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large. We find merit, however, in the General Counsel's exception to the judge's finding that the 10(b) period as to Respondent International began 22 January 1983.[1]

The original charge against Respondent Local was filed 1 June. The Regional Office mailed a copy to the Local 2 June, but apparently the copy was not delivered because the Region did not receive a return receipt. Respondents' counsel, however, represented on the record that a Board agent called him 6 June and fully informed him of the filing of the original charge and its contents. In August 1983 the Board agent mailed another copy of the original charge to Respondent Local after discovering the absence of a return receipt. The judge correctly concluded that, because mailing a charge to a respondent is service of the charge within the meaning of Section 10(b), *NLRB v. Laborers Local 264*, 529 F.2d 778 (8th Cir. 1976), the limitations period as to Respondent Local commenced 2 December 1982. The judge further found that, because the charge against Respondent International was not filed and mailed until 22 July, the 10(b) period for Respondent International commenced 22 January.

The General Counsel contends that service of the original charge on the Local 2 June 1983 determined the applicable 10(b) period for both Unions because both the Local and the International are the recognized representatives of the unit employees, both have been the employees' collective-bargaining agents since 1972, and both are parties to the present labor agreement. We agree.

Both Respondent Local and Respondent International are parties to the collective-bargaining agreement with the Employer in which the allegedly unlawful superseniority clause appears. That contract refers to Respondent Local and Respondent International collectively as the "Union," and grants recognition to the "Union" as the sole and exclusive bargaining agent for all unit employees. Respondent Local and Respondent International constitute a joint representative of the unit employees, and, under such circumstances, service of the charge on the Local is sufficient for service on the International. See *P & L Cedar Products*, 224 NLRB 244, 259 (1976). Accord: *Laborers Oregon District Council (Associated Builders)*, 243 NLRB 405, JD fn. 1 (1979). We find, therefore, that because service of the original charge on the Local was effective 2 June that service determined the applicable 10(b) period for both Respondent Local and Respondent International. We find that the 10(b) period as to both Respondent Local and Respondent International commenced 2 December 1982.

Accordingly, we amend the remedy section of the judge's decision to hold Respondent Local and Respondent International jointly and severally liable for the period beginning 2 December 1982 for any loss of earnings which affected unit employees may have suffered as a result of the discrimination against them. We shall also amend the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that Respondent International Union of Electrical, Radio and Machine Workers, AFL–CIO–CLC and its Local 664, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Jointly and severally make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, such lost earnings to be determined in the

[1] All dates are in 1983 unless otherwise indicated.

manner set forth in the remedy section of this decision as modified."

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. This case arose upon an original charge, a first amended charge, and a second amended charge, dated respectively, June 1, 1983, June 30, 1983, and July 22, 1983, being filed by Nellie Reed, an individual, against the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (Respondent International) and its Local 664 (Respondent Local). The complaint was issued by the Regional Director for Region 26 of the National Labor Relations Board on July 22, 1983.

The complaint, as amended at the hearing, alleges that Respondent International and Respondent Local violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act), by maintaining and enforcing a clause in its collective-bargaining agreement with Spartus Corporation whereby superseniority for purposes of layoff and recall was granted to the secretary-treasurer (financial secretary),[1] sergeant-at-arms, trustees, and executive board members-at-large of Respondent Local. The complaint, as amended, further alleges that the Act was violated when the superseniority clause was invoked on behalf of Joseph Bates, a trustee, Helen Hampton and Shelia Graham, both executive board members-at-large, to the detriment of other employees with greater natural seniority who were not union officers.

Respondents, in their joint r 28, 1983, in Louisville, Mississippi.

On the entire record in the case, to include posthearing briefs filed by the General Counsel and counsel for Respondents and upon my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Spartus Corporation is, and has been at all times material herein, a corporation with an office and place of business in Louisville, Mississippi, and has been engaged in the manufacture of clocks.

Annually, Spartus Corporation, in the course and conduct of its business operations sold and shipped from its Louisville, Mississippi, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Mississippi. Annually, Spartus Corporation, in the course and conduct of its business operations, purchased and received at its Louisville, Mississippi facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Mississippi.

Spartus Corporation is now, and has been at all times material herein, an employer engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act.

[1] Although officially designated the secretary-treasurer, both the General Counsel and counsel for Respondents refer to the position as secretary-treasurer (financial secretary).

II. THE LABOR ORGANIZATIONS INVOLVED

The IUE, Respondent International, and its Local 664, Respondent Local, are now, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

It is uncontested that Spartus Corporation and Respondent International and Respondent Local are parties to a written collective-bargaining agreement which is effective from November 1, 1982, through October 26, 1984. Further, it is uncontested that article XII, section 5, of that collective-bargaining agreement contains a superseniority clause which provides as follows:

> Union officials and Stewards during their term of office shall have seniority which shall permit them to be the last persons laid off and/or the first to be recalled from their lowest-paid classification. The officials subject to this provision are President, 1st Vice President, 2nd Vice President, Secretary-Treasurer, Recording Secretary, Chief Steward, three (3) Trustees, Sergeant-at-Arms, four (4) Executive Board Members-at-Large, and Stewards.

The issue of superseniority has been addressed by the Board a number of times in the last 10 months. In *Gulton-Electro-Voice, Inc.*, 266 NLRB 406 (1983), the first in a series of cases, the Board held that "superseniority awarded to officers who do not perform steward or other on-the-job contract administration functions is not permissible because it unjustifiably discriminates against employees for union-related reasons."

As the Board noted in *Gulton-Electro-Voice* "job retention superseniority is an exceptional benefit. To uphold it we must be satisfied that it is necessary to further the administration of the bargaining agreement on the plant level." (Id. at 409).

Subsequent to its decision in *Gulton-Electro-Voice*, wherein the Board held the grant of superseniority to a union's recording secretary and financial secretary-treasurer to be unlawful, the Board issued decisions in *Auto Workers UAW & Local 561 (Scovill, Inc.)*, 266 NLRB 952 (1983); *Design & Mfg.*, 267 NLRB 440 (1983); *Niagara Machine & Tool Works*, 267 NLRB 661 (1983); *Auto Workers UAW Local 1384 (Ex-Cell-O)*, 267 NLRB 1303 (1983); and *Electrical Workers IUE Local 826 (Otis Elevator)*, 268 NLRB 180 (1983), holding in each case that for a grant of superseniority to be lawful it must be limited to union officials who perform steward-like functions or other on-the-job contract administration functions. A grant of superseniority to any other union official unlawfully discriminates against employees for a union-relation reason; i.e., they are not officers of the union. Factually, this case is most like *Auto Workers UAW & Local 561*, supra wherein the Board held grants of superseniority granted to a union's financial secretary, trustees, sergeant-at-arms, and executive board members-at-large to be unlawful. The functions performed by those officials are like those performed by the officials of Respondent Local who are the subject of this case.

Under the collective-bargaining agreement in this case, a number of officers of Respondent Local are entitled to superseniority. Among them are the president, first vice president, second vice president, recording secretary, chief steward, and stewards. It is not alleged by the General Counsel that a grant of superseniority to any of these officials would be illegal and rightly so because the chief steward and the stewards are obviously involved in "steward-like functions," and the president, first and second vice presidents, recording secretary, and chief steward are members of the grievance and negotiating committee, sometimes referred to as the shop committee, which meets with management in Step 3 of the grievance procedure and also is a party to all negotiations with management. Since these officers all perform either steward-like functions or participate in other on-the-job administration of the grievance procedure of the contract, they are clearly entitled to superseniority for purposes of layoff and recall. This is not so, however, with respect to the secretary-treasurer (financial secretary), trustees, sergeant-at-arms, or executive board members-at-large who are also entitled to superseniority under the collective-bargaining agreement.

There was uncontradicted testimony at the hearing from Carolyn Merritt, former president of Respondent Local, and from Gordon Ingham, manager of Corporate Industrial Relations for Spartus Corporation, that the secretary-treasurer (financial secretary), trustees, and sergeant-at-arms perform no steward-like functions nor do they participate in the grievance procedure at all except as ordinary members who vote of whether to take a grievance to arbitration at Respondent Local's monthly membership meeting, which meeting is held at the Elks Club and not at the plant. The only grievance function performed by the executive board members-at-large is to discuss grievances at the monthly executive board meetings, which meetings are held immediately prior to the general membership meetings at the Elks Club and away from the plant. Grievances are only discussed and not acted on at executive board meetings. It is the general membership which decides whether to take a grievance to arbitration or not.

The trustees, sergeant-at-arms, and executive board members-at-large do not perform any on-the-job contract administration duties. All their duties are performed away from the plant. The principal function of the trustees is to audit the books and records of Respondent Local at least three times a year. The audits take place away from the plant at the Elks Club. The sergeant-at-arms is charged with the responsibility of maintaining order at union meetings, which meetings are not held at the plant. The executive board members-at-large meet regularly but away from the plant. Their meetings are scheduled immediately prior to the general membership meetings. Executive board members-at-large have no functions which require their presence on the jobsite.

The secretary-treasurer (financial secretary) is responsible for receiving and accounting for all moneys paid to Respondent Local, paying all authorized bills of Respondent Local, making financial reports to Respondent Local and Respondent International, and signing checks in conjunction with the president or first vice president. None of the duties of the secretary-treasurer (financial secretary) require that officer's presence on the job except that for reasons of convenience the secretary-treasurer (financial secretary) traditionally has gone to the office of the Local president, which is located at the plant, to get checks cosigned by the president. Evidence at the hearing reflects that this one and only on-the-job function takes no more than one hour a month and is sometimes accomplished during working hours of the secretary-treasurer (financial secretary) and sometimes during nonworking hours. However, there is no requirement that these checks be cosigned by the president at the plant but even if there was such a requirement this minimum amount of time spent on union business at the plant by the secretary-treasurer (financial secretary) would be too insignificant to warrant a grant of superseniority. In *Gulton-Electro-Voice*, supra, the union's financial secretary (treasurer) met monthly with her company's financial officer in administering the dues withholding plan between the company and union. The Board held that this responsibility did not approach the level of responsibility necessary to help stabilize the labor relations of the union and company and therefore a grant of superseniority was not lawful.

It is crystal clear, therefore, that the secretary-treasurer (financial secretary), trustees, sergeant-at-arms and executive board members-at-large are not entitled to superseniority. The next issue to address is whether or not the illegal portions of the superseniority clause in this case were enforced to the detriment of any employees. The original charge in this case was filed against Respondent Local on June 1, 1983, and a copy of the charge sent by certified mail to Respondent Local on June 2, 1983, by Region 26. This means that the 6-month Section 10(b) period as to Respondent Local commenced on December 2, 1982, even though Respondent did not receive actual notice of the charge until after June 2, 1983. The mailing of the charge to Respondent is service of the charge within the meaning of Section 10(b) of the Act. *NLRB v. Laborers Local 264*, 529 F.2d 778 (8th Cir. 1976). Apparently, the copy of the charge mailed to Respondent Local was never delivered to Respondent Local since no return receipt was ever received back at Region 26 and Respondent's counsel states that the charge was not received by his client until some months later when another copy was sent. However, counsel for Respondents represented on the record that a Board agent had called him on June 6, 1983, and fully apprised him of the filing of the original charge and the contents thereof. The 6-month 10(b) period commenced on January 22, 1983, as to Respondent International since the charge against Respondent International was filed and a copy mailed to Respondent International on July 22, 1983.

The uncontradicted evidence at hearing reflects that within the 10(b) period, i.e., commencing December 2, 1982, as to Respondent Local, and January 22, 1983, as to Respondent International, employees with greater natural seniority than trustee Joseph Bates, and executive board members-at-large Helen Hampton and Sheila Graham, were either laid off or delayed in being recalled

from layoff as a result of superseniority rights being exercised by Bates, Hampton, and Graham. Bates, Hampton, and Graham were not lawfully entitled to superseniority as trustee and executive board members-at-large and, therefore, their receipt of superseniority to the detriment of other employees who were not union officers violated Section 8(b)(1)(A) and (2) of the Act.

In restricting grants of superseniority in *Gulton-Electro-Voice*, supra, and subsequent cases to union officials who perform steward-like functions or other on-the-job contract administrative functions, the Board was keenly aware that the superseniority clause in the collective-bargaining agreement was part of an agreement adopted and ratified by a majority of the members of the union. In the instant case evidence reflected that over 95 percent of the members of Respondent Local had ratified the collective-bargaining agreement containing the superseniority clause in question. This does not make the unlawful clause lawful.

Accordingly, I find that, by the maintenance and enforcement of the superseniority clause with respect to the secretary-treasurer (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large, Respondent Local and Respondent International have violated Section 8(b)(1)(A) and (2) of the Act. I further find that, by according Joseph Bates, Helen Hampton, and Shelia Graham superseniority under the unlawful clause to the detriment of other unit employees, Respondent Local and Respondent International further violated Section 8(b)(1)(A) and (2).

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that the superseniority provision here in dispute is unlawful and shall therefore recommend that Respondent Local and Respondent International cease and desist from maintaining or enforcing the superseniority clause in the collective-bargaining agreement with respect to Respondent Local's secretary-treasurer (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large. To remedy the discriminatory application of the unlawful clause, I shall recommend that Respondent Local and Respondent International notify the Employer and all affected employees, in writing, that they have no objection to the reinstatement of all affected employees to the positions they held prior to the enforcement of the superseniority clause against them. I shall further recommend that Respondent Local for the period between December 2, 1982, and January 22, 1983, solely, and Respondent Local and Respondent International, jointly and severally, make all affected unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Finally, I shall recommend that Respondent Local and Respondent International cease and desist in any like or related manner from restraining or coercing employees they represent in the exercise of the rights guaranteed employees by Section 7 of the Act.

CONCLUSIONS OF LAW

1. Spartus Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 664 are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a seniority clause in their collective-bargaining agreement with the Employer which accords Respondent Local's secretary-treasurer (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large superseniority, Respondent Local and Respondent International have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By according Joseph Bates, Helen Hampton, and Shelia Graham superseniority to the detriment of other unit employees under the seniority clause found herein to be unlawful in part, Respondent Local and Respondent International have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

5. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record in this proceeding, I issue the following recommended[2]

ORDER

Respondents, IUE International and its Local 664, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in their collective-bargaining agreement with Spartus Corporation according Respondent Local's secretry-treasure (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large superseniority for purposes of layoff or for any other purpose.

(b) Causing or attempting to cause the Employer to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing employees of the Employer in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, such lost earnings to be deter-

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

mined in the manner set forth in the section of this decision entitled "The Remedy" and Respondent Local and Respondent International to be liable either solely or jointly and severally as set forth in the section of this decision entitled "The Remedy."

(b) Notify the Employer and all affected employees in writing that Respondents have no objection to reinstating the affected unit employees who but for the unlawful assignment of superseniority would not have been laid off or reassigned.

(c) Post at their meeting halls copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and enforce any agreement with Spartus Corporation, according our secretary-treasurer (financial secretary), trustees, sergeant-at-arms, and executive board members-at-large superseniority for the purposes of layoff or any other purpose.

WE WILL NOT cause or attempt to cause that employer to discriminate against employees by requiring that the above-named union officials be retained as active employees, when other employees who have greater seniority in terms of length of employment are laid off or reassigned.

WE WILL NOT in any like or related manner restrain or coerce the employees of Spartus Corporation in the exercise of their rights set forth above.

WE WILL jointly and severally make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, plus interest.

WE WILL notify the Employer that we have no objection to reinstating the affected unit emloyees who but for the unlawful assignment of superseniority would not have been laid off or reassigned.

INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO-CLC & ITS LOCAL 664